

DECISION



118546 *Mjelondy*
8y. II
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: R-206362

DATE: June 2, 1982

MATTER OF: Dynapac Mfg. Co.

DIGEST:

1. Agency's decision to set aside a requirement exclusively for small business participation was proper where the contracting officer reasonably expected bids from two or more small business concerns and that the prices received would be reasonable; contracting officers need not take into account general industry conditions in making small business set-aside determinations.
2. Since the Small Business Act provides that a fair proportion of total contracts awarded by the Government should be placed with small business concerns, the fact that small business concerns may receive a significant proportion of Government contracts for a particular category of items does not necessarily mean they are receiving more than a fair proportion of the total contracts.

Dynapac Mfg. Co., a large business, protests the Defense Logistics Agency's (DLA) decision to issue invitation for bids (IFB) No. DLA700-82-B-1008 as a total small business set-aside. The solicitation sought bids to supply 43 vibratory compactor rollers. Dynapac principally contends that, given the severely depressed state of the vibratory roller industry, the contracting officer abused his discretion in setting this requirement aside for small business. For the reasons discussed below, we deny the protest.

Both the Small Business Act, 15 U.S.C. § 631 (1976), and the Armed Services Procurement Act of 1947, 10 U.S.C. § 2301 (1976), reflect a congressional policy of aiding

small business by requiring the procurement of a "fair proportion" of Government property and services from small business concerns. Under Defense Acquisition Regulation (DAR) § 1-706.5, the provision implementing this congressional policy, a procurement must be set aside for small business whenever the contracting officer reasonably expects bids from at least two responsible small business concerns and that the award will be made at a reasonable price. Contrary to Dynapac's position, contracting officers are not required to consider industry conditions or any other similar factors in making set-aside determinations.

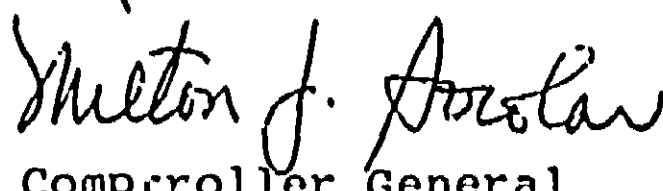
Here, the contracting officer made the requisite determination based on earlier expressions of interest by two small business manufacturers¹, and two small business bids were in fact received (Raygo and Anigroeg). Raygo was the low bidder and its offered prices were deemed reasonable since they did not exceed the Government estimate. Under these circumstances, we find no basis for questioning the setting aside of this procurement. Again, there exists no statutory or regulatory requirement that contracting officers take into account general economic and industry conditions in making set-aside determinations. See Fermont Division, Dynamics Corporation of America, B-199159, July 15, 1981, 81-2 CPD 34.

Dynapac also seems to argue that the set-aside here was improper because it diverted to small business more than the "fair proportion" of vibratory roller manufacturing contemplated by the statutes. In support of this argument, Dynapac has presented industry statistics showing that this requirement represents 5.6 percent of all rollers shipped in 1981, and 13 percent of shipments in the same size classification. In essence, Dynapac is arguing that small businesses are entitled to only a fair proportion of the contracts in the vibratory roller industry. This position is without merit.

¹ DLA previously had attempted to procure these items from Anigroeg Services, Inc., under the Small Business Administration's section 8(a) program, but withdrew the 8(a) set-aside and reissued the solicitation as a small business set-aside upon determining that Anigroeg's offered price was excessive. Two small business manufacturers--Raygo, Inc. and Tampo, Inc.--had quoted prices to Anigroeg before the 8(a) set-aside was withdrawn.

Our Office has specifically held that the broad language of the statutory provisions requiring award of a fair proportion of Government contracts to small business refers to a proportion of total Government contracts for all goods and services. Fermont Division, Dynamics Corporation of America; Onan Corporation, 59 Comp. Gen. 533 (1980), 80-1 CPD 438. Clearly, the mere fact that small business may receive a significant proportion of Government contracts in a particular industry does not necessarily mean that more than a fair proportion of the Government's total contracts has been awarded to small business. J.H. Rutter Rex Manufacturing Co., Inc., B-190905, July 11, 1978, 78-2 CPD 29. This interpretation is consistent with DAR § 1-706.5(a)(1), which expressly provides that whole classes of procurements may be set aside so long as the requisite determinations have been made by the contracting officer. As discussed above, those determinations have been made here. We therefore cannot conclude that the setting aside of this requirement contravened the "fair proportion" policy. See Republic Steel Corporation; Penco Products, Inc., B-205951, B-205951.2, April 29, 1982, 82-1 CPD 399.

The protest is denied.

for 
Comptroller General
of the United States